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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 636

JAMES WALTER CARTER,
Petitioner,

v.

CARTER COAL COMPANY, *et al.*,
Respondents.

No. 651

GUY T. HELVERING, *et al.*,
Petitioners,

v.

JAMES WALTER CARTER, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF FOR CARTER COAL COMPANY, GEORGE L. CARTER, C. A. HALL, JOHN A. CALLAHAN, JOSEPH W. GORMAN AND WALTER S. DENHAM, RESPONDENTS IN NO. 636 AND NO. 651

KARL J. HARDY
Counsel for Respondent Carter Coal Company and its Officer and Director Respondents.

PRESS OF W. F. ROBERTS COMPANY, WASHINGTON, D. C.

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Controversy as it Affects These Respondents

James Walter Carter, a substantial minority stockholder, and the President and a Director, of the Carter Coal Company, by a stockholder's bill of complaint, brought suit in the Supreme Court of the

District of Columbia against these respondents, Carter Coal Company and its Officers and Directors, to enjoin them from accepting and complying with the Bituminous Coal Code provided for in the Bituminous Coal Conservation Act of 1935 and from paying the penalty tax imposed by said Act upon producers failing to accept and comply with the Code, and against the Commissioner of Internal Revenue and the other tax collecting and law enforcement officers of the Government to restrain them from collecting from or assessing or from otherwise attempting to enforce the tax provided for in said Act against, the Carter Coal Company (R. 1-16). The Company is engaged in the production and sale of bituminous coal at its mines in West Virginia and Virginia (Smokeless Field) (R. 119), and as such producer of bituminous coal is subject to the regulatory provisions of the Bituminous Coal Conservation Act of 1935 (Act, Sec. 3), if that Act be valid.

Prior to the institution of this suit, petitioner as a stockholder, made formal demand upon the Company and its Board of Directors to refrain from complying with the Act, to refrain from becoming a member of the Code, to refuse to pay the tax imposed by the Act, and to take appropriate legal steps to determine the constitutionality of the Act, supporting his demand with his reasons therefor (R. 7-8; R. 117-118; R. 619-620).

After consideration of this demand, the Board, by majority vote, resolved that the Company should "accept and obligate itself to comply with the Code" (R. 8; R. 623-624). This resolution was confirmed by a majority vote at a stockholders' meeting called to consider the resolution of the directors and of the

demand of the petitioner (R. 9; R. 117-118; R. 627-629).

As shown by the minutes of both the special meeting of the directors and of the special meeting of the stockholders (R. 8-9; R. 619-629), the position of the majority of the Board of Directors and controlling stockholders and the reason for their declining, as such, to comply with petitioner's demand was found by the Court below to be:

> "* * that the statute is unconstitutional and is economically unsound, and that it would adversely affect the business of the Company and the interest of its shareholders for the Company to accept and comply with the Code, but that nevertheless the Company must accept the Code because of the tax on its gross sales applicable upon its failure to accept the same which the majority are of the opinion would result in serious damage to the Company and might result in its bankruptcy" (R. 117-118).

The penalty tax of 15% imposed for non-acceptance of the Code, if suffered by the Company for any appreciable period of time, would necessitate the cessation of its business (R. 129). Based on the aggregate sales price of coal produced at its mines during the year 1934, a 15% tax would have amounted to $587,740, and a 13½% tax would have amounted to $528,966, creating net losses, respectively, of $263,752 and $204,968 for that year. The net profit of the Company for the year 1934 amounted to $323,998 (after deducting Federal income taxes) (R. 126; R. 128). The returns of the Company for the year 1935 were less than they were in 1934 (R. 126). Neither in the year 1935 nor at

any time during the past eight years have the net profits of the company equalled 15% or 13½% of the total sales price received by the Company for coal produced at its mines (R. 128, 129).

Proceedings Below

These respondents filed an answer to the bill of complaint (R. 39-42), admitting the factual allegations of the bill of complaint, and they affirmatively alleged in the answer:

> "That they intend to accept and bind the Carter Coal Company to comply with the provisions of the Bituminous Coal Code provided for in the Bituminous Coal Conservation Act of 1935, for the reason that the penalty for failure to accept the said code, in the form of a fifteen per cent tax upon all sales of bituminous coal by said defendant company, would result in irreparable and serious damage to the Company and might result in its bankruptcy.
>
> "That the enactment of the Bituminous Coal Conservation Act and the actions authorized thereunder and directed thereby have embarrassed these defendants in the operation of the business of said Company, and that the business of said Company can not be carried on normally until the questions of the validity of the said statute and the said Code raised by the Bill of Complaint herein are authoritatively determined by this Honorable Court." (R. 41)

These respondents prayed in their answer:

> "* * * that if the Court should grant an injunction restraining these defendants from assenting to or filing an acceptance of the said Code binding the defendant Carter Coal Company to observe the same, then in that event the Court

issue its writ of injunction enjoining the collection of the fifteen per cent tax provided for by the Bituminous Coal Conservation Act of 1935; and the defendants further pray that this cause be set down for immediate hearing on the merits in order to remove the obstruction to the conduct of the business of the defendant Carter Coal Company caused by the uncertainties of the existing situation, as aforesaid." (R. 41-42.)

On application of the petitioner the Court below granted an injunction restraining the Company and its Officers and Directors, pendente lite, from executing or filing an acceptance of the Bituminous Coal Code or paying the tax imposed by the Act (R. 93-95). The trial concluded on the 10th day of December, 1935.

The Court below dismissed the bill of complaint (R. 216A-216F), but permanently enjoined the Commissioner of Internal Revenue and the other Government officer respondents from assessing or collecting from the Company any taxes or penalties imposed by or accruing under the Act in excess of one and one-half per centum (1½%) of the sale price at its mines on sales or other disposals of bituminous coal by the Company between November 1, 1935, and the date of the decree (R. 216C).

The Court below further enjoined (R. 216D-216E) these respondents, pending final determination of this cause on appeal, from executing or filing any acceptance of the Bituminous Coal Code or paying the tax imposed by the Bituminous Coal Conservation Act of 1935, and likewise enjoined the Government officer respondents from collecting or attempting to collect the said tax from the Company, upon condition that, during the pendency of the cause on

appeal, there be paid to a depository approved of by that Court a sum equal to one and one-half per centum of the sale price at the mine on sales or other disposals of bituminous coal by the Company during the period beginning with November 1, 1935, at the times a payment of said amounts under the Act would be due, to be held by the depository pending the final outcome of this litigation.

CONCLUSION

These respondents having been enjoined from executing or filing any acceptance of the Bituminous Coal Code by an order of a court of competent jurisdiction and thereby having been prevented from avoiding the imposition of the drastic penalties under the Act, submit that, whatever the conclusion of this Honorable Court may be with respect to the controversy involved, its action be such as to save these respondents harmless in the premises.

Respectfully submitted,

KARL J. HARDY
Counsel for Respondent Carter Coal Company and its Officer and Director Respondents.